

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF LOUISIANA**

SENTRY INSURANCE, A MUTUAL COMPANY	*	
	*	
	*	CIVIL ACTION NO. 2:06CV0570
Plaintiff	*	
VERSUS	*	
	*	JUDGE TRIMBLE
SOUTHWEST LOUISIANA HOSPITAL ASSOCIATION d/b/a LAKE CHARLES MEMORIAL HOSPITAL AND R. DALE BERNAUER, M.D.	*	
	*	MAGISTRATE METHVIN
	*	
	*	
Defendants	*	
* * * * *		

**DEFENDANTS’ MOTION TO DISMISS
FOR LACK OF SUBJECT MATTER JURISDICTION**

NOW INTO COURT, through undersigned counsel, comes SOUTHWEST LOUISIANA HOSPITAL ASSOCIATION d/b/a LAKE CHARLES MEMORIAL HOSPITAL (hereinafter “LCMH,” and R. DALE BERNAUER, M.D. (hereinafter “Dr. Bernauer) who hereby moves this Court to dismiss Sentry’s claims against LCMH and on suggesting to the Court that:

1.

Plaintiff has failed to meet the jurisdictional amount required for diversity jurisdiction pursuant to 28 USC 1332 as to each Defendant, and therefore this Court lacks diversity jurisdiction over Sentry’s claims.

2.

This court lacks subject matter jurisdiction over SENTRY’S action because SENTRY’S claim involves identical issues pending in the Louisiana workers’ compensation court prior to the instant litigation, and the workers’ compensation court has original, exclusive jurisdiction over

those claims. *Beutler-England v. Mermantau Rice Inc*, 2005-942, 931 So.2d 553 (La. App. 3 Cir. 5/31/06). Additionally, SENTRY has effectively removed those issues pending in the Louisiana Workers' compensation Court in violation of 28 USC 1445 (c).

Accordingly, as explained in more detail in the supporting Memorandum, and the exhibits attached thereto, filed with this Motion, this Court should dismiss Plaintiff's claims pending against Sentry for lack of subject matter jurisdiction.

COX, COX, FILO & CAMEL

By: _____ s/Thomas A. Filo

THOMAS A. FILO (La. BR #18210)
MICHAEL K. COX (La. BR #22026)
723 Broad Street
Lake Charles, LA 70601
Telephone: 337 436-6611

COUNSEL FOR R. DALE BERNAUER, M.D.

**STOCKWELL, SIEVERT, VICCELLIO,
CLEMENTS & SHADDOCK, L.L.P.**

By: _____ s/John S. Bradford

JOHN S. BRADFORD (La. BR #03369)
WILLIAM B. MONK (La. BR #09551)
One Lakeside Plaza, Fourth Floor
Lake Charles, LA 70601
Telephone: 337 436-9491
Fax: 337 493-7210

COUNSEL FOR SOUTHWEST LOUISIANA
HOSPITAL ASSOCIATION d/b/a LAKE CHARLES
MEMORIAL HOSPITAL

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing Motion to Dismiss for Lack of Subject Matter Jurisdiction was filed electronically with the Clerk of Court using the CM/ECF system. Notice of this filing will be sent by operation of the court's electronic filing system to:

Terry Christovich Gay
Kevin Richard Tully

Lake Charles, Louisiana, this 5th day of May, 2008.

s/John S. Bradford

JOHN S. BRADFORD (La. BR #03369)
One Lakeside Plaza, Fourth Floor
Lake Charles, LA 70601
Telephone: 337 436-9491
Fax: 337 493-7210